

House File 333 - Introduced

HOUSE FILE _____
BY COMMITTEE ON LABOR

(SUCCESSOR TO HSB 149)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act requiring the payment of local prevailing wage rates to
2 persons working on public improvements for public bodies, and
3 providing penalties and effective and applicability dates.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1573HV 83
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1 1 Section 1. Section 84A.5, subsection 4, Code 2009, is
1 2 amended to read as follows:
1 3 4. The division of labor services is responsible for the
1 4 administration of the laws of this state under chapters 88,
1 5 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 92,
1 6 and 94A, and section 85.68. The executive head of the
1 7 division is the labor commissioner, appointed pursuant to
1 8 section 91.2.
1 9 Sec. 2. Section 91.4, Code 2009, is amended by adding the
1 10 following new subsection:
1 11 NEW SUBSECTION. 11. To determine the prevailing wage
1 12 rates pursuant to chapter 91F.
1 13 Sec. 3. NEW SECTION. 91F.1 SHORT TITLE.
1 14 This chapter shall be known and may be cited as the "Public
1 15 Improvement Quality Protection Act".
1 16 Sec. 4. NEW SECTION. 91F.2 PUBLIC POLICY.
1 17 It is in the public interest that public improvements are
1 18 completed by the best means and highest quality of labor
1 19 reasonably available, and that workers working on public
1 20 improvements be compensated according to the real value of the
1 21 services they perform. It is the policy of this state that
1 22 the wages of workers working on public improvements should be
1 23 at least equal to the prevailing wage rates paid for similar
1 24 work by responsible contractors in the community as a whole in
1 25 order to accomplish all of the following:
1 26 1. Protect workers and their contractors and
1 27 subcontractors from the effects of serious and unfair
1 28 competition resulting from wage levels detrimental to
1 29 efficiency and well-being.
1 30 2. Ensure that contractors compete with one another on the
1 31 basis of the ability to perform work competently and
1 32 efficiently while maintaining community-established
1 33 compensation standards.
1 34 3. Recognize that local participation in public
1 35 improvements and family wage income and benefits are essential
2 1 to the protection of community standards.
2 2 4. Encourage training and education of workers to industry
2 3 skills standards.
2 4 5. Encourage contractors and subcontractors to use funds
2 5 allocated for employee fringe benefits for the actual purchase
2 6 of those benefits.
2 7 Sec. 5. NEW SECTION. 91F.3 DEFINITIONS.
2 8 As used in this chapter, unless the context otherwise
2 9 requires:
2 10 1. "Commissioner" means the labor commissioner appointed
2 11 pursuant to section 91.2 or the labor commissioner's designee.
2 12 2. "Contractor" or "subcontractor" means a person who
2 13 undertakes, offers to undertake, purports to have the capacity
2 14 to undertake, or submits a bid, individually or through
2 15 others, to engage in a public improvement.
2 16 3. "Division" means the division of labor of the
2 17 department of workforce development.

2 18 4. a. "Fringe benefits" means the following provision or
2 19 purchases of any of the benefits enumerated in paragraph "b".
2 20 (1) Contributions irrevocably made by a contractor or
2 21 subcontractor to a trustee or to a third person pursuant to a
2 22 plan, fund, or program.
2 23 (2) The costs to the contractor or subcontractor which are
2 24 reasonably related to providing benefits to workers pursuant
2 25 to an enforceable commitment to carry out a financially
2 26 responsible plan or program, given in writing to the workers
2 27 affected.
2 28 b. The following benefits are fringe benefits:
2 29 (1) Health insurance, including dental and vision
2 30 benefits.
2 31 (2) Pension, retirement, or annuity benefits.
2 32 (3) Life insurance or death benefits.
2 33 (4) Vacation or holiday pay.
2 34 (5) Sick leave.
2 35 (6) Long-term and short-term disability benefits.
3 1 (7) Defraying costs of apprenticeship programs approved
3 2 and registered with the United States department of labor's
3 3 office of apprenticeship.
3 4 5. "Interested party" means any of the following:
3 5 a. A contractor who submits a bid for the purpose of
3 6 securing the award of a contract for a public improvement.
3 7 b. A subcontractor of a contractor mentioned in a bid
3 8 referred to in paragraph "a".
3 9 c. A worker employed by a contractor or subcontractor
3 10 described in either paragraph "a" or "b".
3 11 d. A labor organization that represents workers engaged in
3 12 the same craft or classification as workers employed by a
3 13 contractor or subcontractor described in either paragraph "a"
3 14 or "b" and that exists, in whole or in part, for the purpose
3 15 of negotiating with employers concerning the wages, hours, or
3 16 terms and conditions of employment of employees.
3 17 e. A joint labor-management committee established pursuant
3 18 to the federal Labor Management Cooperation Act of 1978, 29
3 19 U.S.C. } 175a.
3 20 f. The division of labor of the department of workforce
3 21 development.
3 22 g. The department of transportation.
3 23 6. "Locality" means a county of this state.
3 24 7. "Maintenance work" means the repair of existing public
3 25 improvements when the size, type, or extent of the public
3 26 improvement is not changed or increased.
3 27 8. "Prevailing wage rate" means the hourly wage plus
3 28 fringe benefits, which the commissioner determines prevails in
3 29 accordance with this chapter.
3 30 9. "Public body" means the state and any of its political
3 31 subdivisions, including but not limited to a county, city,
3 32 township, school district, state board of regents, and public
3 33 utility. For the purposes of this chapter, "public utility"
3 34 includes municipally owned utilities and municipally owned
3 35 waterworks.
4 1 10. a. "Public improvement" means any of but not limited
4 2 to the following that meets the criteria set out in paragraphs
4 3 "b" and "c":
4 4 (1) (a) Construction; alteration; reconstruction; repair;
4 5 rehabilitation; refinishing; refurbishing; remodeling;
4 6 renovation; maintenance; landscaping; improving; moving;
4 7 wrecking; painting; decorating; custom fabrication, which
4 8 includes fabrication of plumbing, heating, cooling,
4 9 ventilation, architectural systems, structural systems,
4 10 exhaust duct systems, or mechanical insulation; demolishing
4 11 of, adding to, or subtracting from any building, structure,
4 12 sewer, ditch, sewage disposal plant, waterworks, parking
4 13 facility, excavation or other structure, project, development,
4 14 or improvement, or any part thereof undertaken by a public
4 15 body.
4 16 (b) The erection of scaffolding or other structures or
4 17 works; the maintenance, repair, assembly, or disassembly of
4 18 equipment; the testing of materials; the hauling of refuse
4 19 incidental to the public improvement from the project site to
4 20 an outside disposal location; the cleaning of grounds or
4 21 structures; or the addition to or fabrication into any
4 22 structure, project, development, or improvement of any
4 23 material or article of merchandise undertaken by a public
4 24 body.
4 25 (2) The preparation and removal of roadway construction
4 26 zones, lane closures, flagging, or traffic diversions
4 27 undertaken by a public body.
4 28 (3) The installation, repair, maintenance, or calibration

4 29 of monitoring equipment for underground storage tanks
4 30 undertaken by a public body.

4 31 (4) The transportation of supplies, material, and
4 32 equipment to or from the property or premises undertaken by a
4 33 public body.

4 34 b. Work on the public improvement is performed under
4 35 public supervision or direction, and the work is financed
5 1 wholly or in part from public funds, or if at the time of
5 2 commencement of the public improvement both of the following
5 3 conditions with respect to the public improvement are met:

5 4 (1) Not less than fifty-five percent of the structure is
5 5 leased by a public body, or is subject to a written agreement
5 6 to be subsequently leased by a public body.

5 7 (2) The portion of the structure that is leased or subject
5 8 to a written agreement to be subsequently leased by a public
5 9 body measures more than twenty thousand square feet.

5 10 c. The public improvement meets one of the following
5 11 descriptions:

5 12 (1) The project is funded by the state or the state board
5 13 of regents and the estimated total cost is one hundred
5 14 thousand dollars or more.

5 15 (2) The project is funded by a school district and the
5 16 estimated total cost is three hundred thousand dollars or
5 17 more.

5 18 (3) The project is funded by a county with a population of
5 19 forty thousand or more and the estimated total cost is one
5 20 hundred thousand dollars or more. Population, for the
5 21 purposes of this subparagraph, shall be based on the most
5 22 recent United States census bureau annual census figures.
5 23 Beginning in 2011, the most recent United States census bureau
5 24 decennial census figures shall be used to calculate population
5 25 for the purposes of this subparagraph.

5 26 (4) The project is funded by a city with a population of
5 27 twenty thousand or more and the estimated total cost is one
5 28 hundred thousand dollars or more. Population, for the
5 29 purposes of this subparagraph, shall be based on the most
5 30 recent United States census bureau annual census figures.
5 31 Beginning in 2011, the most recent United States census bureau
5 32 decennial census figures shall be used to calculate population
5 33 for the purposes of this subparagraph.

5 34 (5) The total estimated cost of the project is one million
5 35 dollars or more, regardless of the public body's population.

6 1 11. a. "Worker" means an individual who performs any
6 2 labor or service for a contractor or subcontractor on a public
6 3 improvement but does not include an individual when
6 4 transporting supplies, materials, or equipment for a seller,
6 5 supplier, manufacturer, or processor of materials or
6 6 equipment. The individual is deemed an employee of a
6 7 contractor or subcontractor unless all of the following
6 8 conditions apply and an independent contractor relationship
6 9 between the individual and the contractor or subcontractor is
6 10 intended to be created:

6 11 (1) The contractor or subcontractor does not control or
6 12 direct the performance of services by the individual.

6 13 (2) The contractor or subcontractor is not responsible for
6 14 the payment of the individual's wages.

6 15 (3) The contractor or subcontractor does not have the
6 16 right to discharge the individual or to terminate the working
6 17 relationship with the individual.

6 18 (4) The contractor or subcontractor is not the authority
6 19 in charge of the work or for whose benefit the individual is
6 20 providing services.

6 21 b. An individual classified as an employee under this
6 22 subsection shall also be classified as an employee pursuant to
6 23 chapters 85, 85A, 85B, 88, 91A, and 96.

6 24 Sec. 6. NEW SECTION. 91F.4 DETERMINATION OF PREVAILING
6 25 WAGES.

6 26 1. The commissioner shall determine annually and publish,
6 27 on the first business day of July, the prevailing wage rates
6 28 by locality for each craft, classification, or type of worker
6 29 needed to perform work on public improvements. The rates
6 30 shall be conclusive for one year from the date of publication
6 31 unless superseded within the one year by a later publication
6 32 of the commissioner, or for a longer period as provided in
6 33 subsection 5.

6 34 2. The commissioner shall announce all prevailing wage
6 35 rate determinations by locality and give notice by posting
7 1 them on the portion of the department of workforce
7 2 development's internet website related to the division. A
7 3 printed version of the prevailing wage rates for the state
7 4 shall be available to the public upon request to the division.

7 5 3. The public body awarding any contract for a public
7 6 improvement, or otherwise undertaking any public improvement,
7 7 shall obtain from the internet website the prevailing wage
7 8 rate in the locality in which the public improvement is to be
7 9 performed for each craft, classification, or type of worker
7 10 needed to perform work on the public improvement. After a
7 11 public improvement contract is awarded, or a public
7 12 improvement is otherwise undertaken, the prevailing wage rate
7 13 published by the commissioner and stated in the public body's
7 14 public improvement procurement documents shall remain in
7 15 effect throughout the duration of the public improvement
7 16 unless superseded by a later determination and publication by
7 17 the commissioner, or unless multiyear prevailing wage rates
7 18 have been published by the commissioner at the time the public
7 19 improvement procurement documents were released.

7 20 4. a. In determining the annual prevailing wage rate for
7 21 any craft, classification, or type of worker, the commissioner
7 22 shall ascertain and consider data obtained by the division
7 23 during any prevailing wage rate survey of contractors who
7 24 participate in an apprenticeship program approved by and
7 25 registered with the United States department of labor's office
7 26 of apprenticeship, who provide health insurance and retirement
7 27 benefits for their workers, and who are registered with the
7 28 division; the prevailing wage rate determinations that may
7 29 exist for federal public improvements within the locality; and
7 30 the applicable wage rates and fringe benefits established by
7 31 collective bargaining agreements. Based upon these
7 32 considerations, the commissioner shall calculate the
7 33 prevailing wage rates based on the wage rates plus fringe
7 34 benefits rates most often occurring for each craft,
7 35 classification, or other type of worker within each locality.

8 1 b. None of the benefits enumerated in this chapter may be
8 2 considered in the determination of prevailing wage rates if
8 3 the contractor or subcontractor is required by other federal,
8 4 state, or local law to provide such benefits.

8 5 5. If the commissioner determines that the prevailing wage
8 6 rate for any craft, classification, or type of worker is the
8 7 rate established by a collective bargaining agreement
8 8 applicable in the locality, the commissioner may adopt that
8 9 rate by reference and that determination shall be effective
8 10 for the life of the agreement or until the commissioner adopts
8 11 another rate.

8 12 6. Notwithstanding other provisions of this chapter to the
8 13 contrary, federal Davis-Bacon Act prevailing wage rates and
8 14 procedures, as defined in 29 C.F.R. pts. 1, 3, and 5, except
8 15 for 29 C.F.R. pts. 1.8 and 1.9, and administered by the public
8 16 body apply to public improvements that are publicly owned
8 17 horizontal transportation infrastructure, which includes but
8 18 is not limited to roads and streets as defined in section
8 19 306.3. However, the dollar and population threshold criteria
8 20 of section 91F.3, subsection 10, paragraph "c", and an
8 21 objections and appeals process to be established by the
8 22 department of transportation under chapter 17A, remain
8 23 applicable.

8 24 Sec. 7. NEW SECTION. 91F.5 PREVAILING WAGE RATE
8 25 DETERMINATION == OBJECTIONS == APPEALS.

8 26 1. a. (1) Within fifteen days after the division has
8 27 published on the department of workforce development's
8 28 internet website the annual prevailing wage rates for each
8 29 classification, craft, or other type of worker in a locality,
8 30 an interested party may seek reconsideration of the
8 31 determination or part of the determination by filing a written
8 32 objection, which shall include a statement of the interested
8 33 party's views and other pertinent information, with the
8 34 commissioner by restricted certified mail as defined in
8 35 section 618.15.

9 1 (2) Upon receipt of the written objection, the
9 2 commissioner shall respond by modifying or denying the
9 3 determination and providing a written reply by restricted
9 4 certified mail to the interested party within fifteen days
9 5 from the date of the receipt of the written objection.

9 6 (3) The commissioner shall publish a modification to the
9 7 determination within five business days of notification of the
9 8 interested party and the modification shall be effective upon
9 9 publication.

9 10 b. (1) Within ten days upon receiving receipt of the
9 11 commissioner's decision, the interested party may file a
9 12 written appeal to the department of inspections and appeals,
9 13 which shall set a hearing date before an administrative law
9 14 judge, who shall be an attorney.

9 15 (2) The department of inspection and appeals shall give

9 16 notice by restricted certified mail to the interested party
9 17 and the division at least ten days before the hearing date of
9 18 the time and place of the hearing.
9 19 (3) The hearing shall be held within thirty days after the
9 20 department of inspections and appeals receives the interested
9 21 party's written objection, and shall not be postponed or reset
9 22 for a later date except upon the consent, in writing, of both
9 23 the interested party and the division.
9 24 (4) The interested party objecting to the determination
9 25 set by the division shall have the burden of establishing that
9 26 the disputed determination was not determined in accordance
9 27 with this chapter. If the interested party objects to the
9 28 failure to include a particular craft, classification, or type
9 29 of worker within the annual prevailing wage rate determination
9 30 in a locality, the interested party must establish that the
9 31 particular craft, classification, or type of worker does not
9 32 exist under a different prevailing wage rate classification in
9 33 any of the localities under consideration.
9 34 (5) The administrative law judge may hear each objection
9 35 filed separately or, if applicable, consolidate two or more
10 1 objections about the same determination filed with the
10 2 department of inspections and appeals. The administrative law
10 3 judge shall render a final determination within twenty days
10 4 after the conclusion of the hearing.
10 5 2. An interested party may appeal the final determination
10 6 of the administrative law judge through judicial review as
10 7 provided under section 17A.19.
10 8 3. In all reviews or appeals under this chapter, the
10 9 attorney general shall represent the division and defend the
10 10 division's determination.
10 11 4. Notwithstanding section 17A.19, subsection 5, paragraph
10 12 "c", this section does not give reason or provide cause for an
10 13 injunction to halt or delay any public improvement.
10 14 Sec. 8. NEW SECTION. 91F.6 PAYMENT OF PREVAILING WAGES
10 15 REQUIRED.
10 16 1. Contractors and subcontractors engaged in a public
10 17 improvement shall not pay less than the current specified
10 18 prevailing wage rates to all of their workers engaged in the
10 19 public improvement. However, this chapter does not prohibit
10 20 the payment of more than the prevailing wage rate to any
10 21 workers engaged in a public improvement.
10 22 2. All contractors and subcontractors required to pay the
10 23 prevailing wage rate under this chapter shall pay the wages in
10 24 legal tender, without any deduction for food, sleeping
10 25 accommodations, transportation, use of tools or safety
10 26 equipment, vehicle or equipment rental, or any other thing of
10 27 any kind or description.
10 28 Sec. 9. NEW SECTION. 91F.7 REQUIREMENTS FOR PUBLIC
10 29 IMPROVEMENTS.
10 30 1. The public body awarding a contract for a public
10 31 improvement or otherwise undertaking a public improvement
10 32 shall specify in the call for bids for the contract that this
10 33 chapter applies to the public improvement. All bid
10 34 specifications shall list the specified prevailing wage rates
10 35 for all crafts, classifications, or types of workers in the
11 1 locality for each worker needed to be included in the
11 2 contract.
11 3 2. If a contract is let for a public improvement requiring
11 4 the payment of prevailing wage rates, the public body awarding
11 5 the contract shall cause to be inserted in the public
11 6 improvement specifications and contract a stipulation that not
11 7 less than the prevailing wage rate shall be paid to all
11 8 workers performing work under the contract. The contract
11 9 shall also contain a provision that if it is found that any of
11 10 the contractor or subcontractor's workers engaged in the
11 11 public improvement has been paid at a wage rate less than the
11 12 prevailing wage rate required by this chapter, the public body
11 13 may terminate the contractor or subcontractor's right to
11 14 proceed with the work and the contractor and its sureties
11 15 shall be liable to the public body for any excess costs
11 16 occasioned by the failure to pay the prevailing wage rate. If
11 17 a subcontract is let for a public improvement, the provisions
11 18 of this subsection apply to contracts with lower-tiered
11 19 subcontractors and their workers.
11 20 3. A contractor and subcontractor engaging in a public
11 21 improvement shall submit a performance bond in an amount
11 22 determined by the public body which bond shall include a
11 23 provision that will guarantee the payment of the prevailing
11 24 wage rates as required by the contract.
11 25 4. The public body awarding a contract for a public
11 26 improvement or otherwise undertaking a public improvement

11 27 shall notify the commissioner in writing, on a form prescribed
11 28 by the commissioner, if a contract subject to the provisions
11 29 of this chapter has been awarded. The public body shall file
11 30 the notification with the commissioner within thirty days
11 31 after the contract is awarded or before commencement of the
11 32 public improvement, whichever is sooner, and shall include a
11 33 list of all first-tier subcontractors.

11 34 Sec. 10. NEW SECTION. 91F.8 FEDERAL PUBLIC IMPROVEMENTS
11 35 == NOT APPLICABLE.

12 1 The provisions of this chapter shall not be applicable to
12 2 public improvements financed entirely by federal funds which
12 3 require a prevailing wage rate determination by the United
12 4 States department of labor. If a public improvement is
12 5 financed in part by a public body and in part by federal
12 6 funds, the higher of the prevailing wage rates shall prevail
12 7 for the public improvement.

12 8 Sec. 11. NEW SECTION. 91F.9 RECORDS REQUIRED.

12 9 While participating in a public improvement, the contractor
12 10 and each subcontractor shall do both of the following:

12 11 1. Make and keep, for a period of not less than three
12 12 years, accurate records of all workers employed by the
12 13 contractor or subcontractor on the public improvement. The
12 14 records shall include each worker's name, address, telephone
12 15 number when available, social security number, trade
12 16 classification, the hourly wages paid in each pay period, the
12 17 number of hours worked each day, and the starting and ending
12 18 times of work each day.

12 19 2. Post the prevailing wage rates for each craft,
12 20 classification, or type of workers involved in the public
12 21 improvement in a prominent and easily accessible place at the
12 22 site of the public improvement or at the place or places used
12 23 by the contractor or subcontractor to pay workers their wages.

12 24 Sec. 12. NEW SECTION. 91F.10 POWERS OF COMMISSIONER.

12 25 1. The commissioner and the division shall administer this
12 26 chapter, and the commissioner shall adopt rules for the
12 27 administration and enforcement of this chapter as provided in
12 28 section 91.6.

12 29 2. The commissioner shall enforce the provisions of this
12 30 chapter. The commissioner may hold hearings and investigate
12 31 charges of violations of this chapter.

12 32 3. The commissioner may, consistent with due process of
12 33 law, enter any place of employment to inspect records
12 34 concerning wages and payrolls, to question the employer and
12 35 employees, and to investigate such facts, conditions or
13 1 matters as are deemed appropriate in determining whether any
13 2 person has violated the provisions of this chapter. However,
13 3 such entry by the commissioner shall only be in response to a
13 4 written complaint.

13 5 4. The commissioner shall develop a written complaint form
13 6 applicable for this chapter and make it available in division
13 7 offices and on the department of workforce development's
13 8 internet website.

13 9 5. The commissioner may sue for injunctive relief against
13 10 the awarding of a contract, the undertaking of a public
13 11 improvement, or the continuation of a public improvement when
13 12 the prevailing wage rate requirements of this chapter have not
13 13 been met.

13 14 6. The commissioner may investigate and ascertain the
13 15 wages of workers engaged in any public improvement in this
13 16 state.

13 17 7. The commissioner may administer oaths, take or cause to
13 18 be taken depositions of witnesses, and require by subpoena the
13 19 attendance and testimony of witnesses and the production of
13 20 all books, registers, payrolls, and other evidence relative to
13 21 the matter under investigation or hearing.

13 22 8. The commissioner may employ such qualified personnel as
13 23 are necessary for the enforcement of this chapter. Such
13 24 personnel shall be employed pursuant to chapter 8A, subchapter
13 25 IV.

13 26 9. The commissioner shall adopt, pursuant to chapter 17A,
13 27 any rules necessary to carry out the provisions of this
13 28 chapter.

13 29 10. The commissioner shall require a contractor or
13 30 subcontractor to file, within ten days of receipt of a
13 31 request, any records enumerated in section 91F.9. If the
13 32 contractor or subcontractor fails to provide the requested
13 33 records within ten days, the commissioner may direct, within
13 34 fifteen days after the end of the ten-day period, that the
13 35 fiscal or financial officer charged with the custody and
14 1 disbursements of the funds of the public body, which
14 2 contracted for construction of the public improvement or

14 3 undertook the public improvement, to immediately withhold from
14 4 payment to the contractor or subcontractor up to twenty-five
14 5 percent of the amount to be paid to the contractor or
14 6 subcontractor under the terms of the contract or written
14 7 instrument under which the public improvement is being
14 8 performed. The amount withheld shall be immediately released
14 9 upon receipt by the public body of a notice from the
14 10 commissioner indicating that the request for records as
14 11 required by this section has been satisfied.

14 12 Sec. 13. NEW SECTION. 91F.11 NOTICE OF VIOLATIONS.

14 13 1. For purposes of this section:

14 14 a. "Accurate records" means the hourly rate of
14 15 contribution and costs paid for fringe benefits and whether
14 16 the contributions and costs of the fringe benefits were paid
14 17 into a fund or paid directly to the worker.

14 18 b. "Decision" means a determination by the division that a
14 19 single violation of this chapter has occurred, warranting the
14 20 commissioner to issue a notice of violation to a contractor or
14 21 subcontractor.

14 22 c. "Notice of second violation" is a formal written notice
14 23 issued by the division advising a contractor or subcontractor
14 24 that a second or subsequent violation has occurred within
14 25 three years from the date of the notice of a first violation.

14 26 d. "Notice of violation" means a formal written notice
14 27 issued by the division to a contractor or subcontractor that
14 28 the division has made a decision that the contractor or
14 29 subcontractor has violated this chapter.

14 30 e. "Violation" means a written decision by the division
14 31 that a contractor or subcontractor has done one of the
14 32 following:

14 33 (1) Failed or refused to pay the prevailing wage rate to
14 34 one or more workers as required by this chapter.

14 35 (2) Failed to keep accurate records as required by this
15 1 chapter.

15 2 (3) Failed to produce for the division accurate records or
15 3 produced records not in compliance with this chapter.

15 4 (4) Refused to submit records or testimony to the division
15 5 in response to a subpoena issued in accordance with this
15 6 chapter.

15 7 (5) Refused the division access, at any reasonable hour at
15 8 a location within the state, to inspect the contractor's or
15 9 subcontractor's records as required by this chapter.

15 10 (6) Failed to insert into a contract, a written
15 11 stipulation that not less than the prevailing wage rate be
15 12 paid as required by this chapter.

15 13 (7) Failed to obtain a bond in the proper amount that
15 14 guarantees the payment of the prevailing wage rates required
15 15 in the contract.

15 16 (8) Failed to post the prevailing wage rates as required
15 17 by this chapter.

15 18 2. After receipt of a written complaint by an interested
15 19 party or on the division's initiative, the commissioner shall
15 20 review the investigative file to determine whether a violation
15 21 has occurred for which the contractor or subcontractor must be
15 22 given notice. All information gathered during an audit or
15 23 investigation shall be considered and shall constitute the
15 24 basis for the division's decision that this chapter has been
15 25 violated and that a notice of violation is required to be
15 26 issued. The notice of violation shall identify the specific
15 27 violation and the amount of moneys estimated due the division
15 28 and in controversy based on reasons contained in the
15 29 investigative file.

15 30 3. In making a decision that a contractor or subcontractor
15 31 has failed to allow the commissioner access to accurate
15 32 records, the commissioner shall rely on the information
15 33 contained in the investigative file, and shall assess a
15 34 separate violation for each day worked by each worker on the
15 35 public improvement. Each decision of a separate violation
16 1 shall be listed in the notice of violation.

16 2 4. In determining that this chapter has been violated and
16 3 that the issuance of a notice of violation is required, the
16 4 commissioner shall base the decision on one or any combination
16 5 of the following reasons:

16 6 a. The severity of the violations, which includes the
16 7 following:

16 8 (1) The amount of wages that are determined to be
16 9 underpaid pursuant to this chapter.

16 10 (2) The activity or conduct complained of that violates
16 11 the requirements of this chapter and was not merely a
16 12 technical, nonsubstantive error. Examples of a technical
16 13 error include but are not limited to a mathematical error,

16 14 bookkeeping error, transposition of numbers, or computer or
16 15 programming error.
16 16 b. The nature and duration of the present violation and
16 17 the prior history of the contractor or subcontractor related
16 18 to this history. The prior history considered shall not
16 19 exceed seven years before the date of the notice of violation.
16 20 c. Whether the contractor or subcontractor has kept
16 21 payroll records and accurate records for three years and
16 22 whether the contractor or subcontractor produced payroll
16 23 records in accordance with section 91F.9.
16 24 d. Whether the contractor or subcontractor has violated
16 25 any other provision of this chapter.
16 26 5. The notices of the first, second, and subsequent
16 27 violations shall be sent by restricted certified mail,
16 28 addressed to the last known address of the contractor or
16 29 subcontractor involved. The notices shall contain a reference
16 30 to the specific provisions of this chapter alleged to have
16 31 been violated, identify the particular public improvement
16 32 involved, identify the conduct complained of, and identify
16 33 whether the notice is a first, second, or subsequent notice,
16 34 and include a contractor's or subcontractor's statement of
16 35 liabilities.

17 1 Sec. 14. NEW SECTION. 91F.12 VIOLATIONS == REMEDIES.

17 2 1. If the commissioner determines that a public body has
17 3 divided a public improvement into more than one contract for
17 4 the purpose of avoiding compliance with this chapter, the
17 5 commissioner shall issue an order compelling compliance. In
17 6 making a determination whether a public body has divided a
17 7 public improvement into more than one contract for the purpose
17 8 of avoiding compliance with this chapter, the commissioner
17 9 shall consider all of the following:

17 10 a. The physical separation of the public improvement
17 11 structures.
17 12 b. The timing of the work on the public improvement phases
17 13 or structures.
17 14 c. The continuity of public improvement contractors and
17 15 subcontractors working on public improvement parts or phases.
17 16 d. The manner in which the public body and the contractor
17 17 and subcontractors administer and implement work on the public
17 18 improvement.

17 19 2. A worker employed by the contractor or subcontractor
17 20 who is paid less than the specified prevailing wage rate under
17 21 this chapter shall have a private right of action for the
17 22 difference between the amount so paid and the specified
17 23 prevailing wage rate, and punitive damages, if appropriate,
17 24 together with costs and reasonable attorney fees as shall be
17 25 allowed by the court, and the contractor or subcontractor
17 26 shall additionally be liable to the division for fifty percent
17 27 of the underpayments.

17 28 3. If a second or subsequent action to recover
17 29 underpayments is brought against a contractor or subcontractor
17 30 within a three-year period and the contractor or subcontractor
17 31 is found liable for underpayments to a worker, the contractor
17 32 or subcontractor shall be liable to the division for
17 33 seventy-five percent of the underpayments payable as a result
17 34 of the second or subsequent action. The three-year period
17 35 begins to run from the date the contractor or subcontractor is
18 1 determined liable for the first violation.

18 2 4. The commissioner and any interested party shall also
18 3 have a right of action on behalf of a worker who has a right
18 4 of action under this chapter. An action brought to recover
18 5 the same shall be deemed to be a suit for wages, and all
18 6 judgments entered in the action shall have the same force and
18 7 effect as other judgments for wages. At the request of a
18 8 worker employed by a contractor or subcontractor who is paid
18 9 less than the prevailing wage rate required by this chapter,
18 10 the commissioner may take an assignment of the wage claim in
18 11 trust for the assigning worker and may bring any legal action
18 12 necessary to collect the claim, and the contractor or
18 13 subcontractor shall be required to pay the expenses of the
18 14 division incurred in collecting the claim.

18 15 5. a. It is a violation of this chapter for a contractor
18 16 or subcontractor to do any of the following:

18 17 (1) To request or demand, either before or after the
18 18 worker is engaged, that a worker pay back, return, donate,
18 19 contribute, or give any part or all of the worker's wages,
18 20 salary, or thing of value, to any person, upon the statement,
18 21 representation, or understanding that failure to comply with
18 22 the request or demand will prevent the worker from procuring
18 23 or retaining employment.

18 24 (2) To directly or indirectly pay, request, or authorize

18 25 any other person to violate this chapter.
18 26 b. This subsection does not apply to an agent or
18 27 representative of a duly constituted labor organization acting
18 28 in the collection of dues or assessments of the organization.
18 29 6. In addition to other penalties provided under this
18 30 chapter, whoever induces a worker working on a public
18 31 improvement subject to this chapter to give up or forego any
18 32 part of the prevailing wage rates to which the worker is
18 33 entitled under this chapter by threat not to employ or by
18 34 threat of dismissal from employment commits a serious
18 35 misdemeanor. An agreement between the worker and the
19 1 contractor or subcontractor to work for less than the
19 2 specified prevailing wage rate shall not be a defense to
19 3 criminal prosecution.
19 4 7. a. A contract shall not be awarded to a contractor or
19 5 subcontractor who, on two separate occasions within a
19 6 three-year period, has been determined by the commissioner to
19 7 have violated this chapter.
19 8 8. If the division determines that a contractor or
19 9 subcontractor has violated this chapter on two separate
19 10 occasions within a three-year period, the division shall list
19 11 on the department of workforce development's internet website
19 12 and keep on record the name of the contractor or subcontractor
19 13 and give notice by restricted certified mail of the list to
19 14 any public body requesting the list.
19 15 9. Upon a determination that a contractor or subcontractor
19 16 has violated this chapter on two separate occasions within a
19 17 three-year period, the division shall notify the violating
19 18 contractor or subcontractor by restricted certified mail. The
19 19 contractor or subcontractor has ten working days to request of
19 20 the division a hearing before an administrative law judge on
19 21 the alleged violation. Failure to respond within ten working
19 22 days shall result in automatic and immediate barring of the
19 23 violator from work and placement and publication of the
19 24 violator's name on the department of workforce development's
19 25 internet website. If the contractor or subcontractor requests
19 26 a hearing within ten working days by restricted certified
19 27 mail, the department of inspections and appeals shall set a
19 28 hearing before an administrative law judge on the alleged
19 29 violation. The hearing shall take place no later than thirty
19 30 calendar days after the receipt by the division of the request
19 31 for a hearing. An action by an administrative law judge
19 32 constitutes final agency action and is subject to judicial
19 33 review under section 17A.19.
19 34 10. The attorney general shall prosecute the cases
19 35 identified in this section upon complaint by the commissioner
20 1 or by any interested person. In any proceeding brought
20 2 pursuant to this section, the commissioner shall be
20 3 represented by the attorney general.
20 4 11. This section does not give reason or provide cause for
20 5 an injunction to halt or delay any public improvement.
20 6 Sec. 15. NEW SECTION. 91F.13 APPRENTICES.
20 7 This chapter shall not prevent the employment of
20 8 apprentices upon public improvements. However, an apprentice
20 9 employed on a public improvement must be registered with the
20 10 United States department of labor's office of apprenticeship
20 11 under an apprenticeship program registered with that office,
20 12 paid the proper wages specified in the standards of
20 13 apprenticeship, and engaged only in the trade to which the
20 14 apprentice is registered. If the apprentice is employed on a
20 15 public improvement in a trade to which the apprentice is not
20 16 registered with the United States department of labor's office
20 17 of apprenticeship, the apprentice shall be treated as any
20 18 other worker under this chapter.
20 19 Sec. 16. IMPLEMENTATION OF ACT. Section 25B.2, subsection
20 20 3, shall not apply to this Act.
20 21 Sec. 17. EMERGENCY RULES. The commissioner may adopt
20 22 emergency rules under section 17A.4, subsection 3, and section
20 23 17A.5, subsection 2, paragraph "b", to implement the
20 24 provisions of this Act and the rules shall be effective
20 25 immediately upon filing unless a later date is specified in
20 26 the rules. Any rules adopted in accordance with this section
20 27 shall also be published as a notice of intended action as
20 28 provided in section 17A.4.
20 29 Sec. 18. TEMPORARY WAGE RATE DETERMINATIONS ==
20 30 APPLICABILITY. The commissioner may utilize the wage rates
20 31 and fringe benefits rates as set by the federal Davis-Bacon
20 32 Act, 40 U.S.C. } 3141, et seq., until such time as the
20 33 commissioner may determine the appropriate wage rates and
20 34 fringe benefits rates for each locality as prescribed in this
20 35 Act.

21 1 Sec. 19. EFFECTIVE DATE. This Act, being deemed of
21 2 immediate importance, takes effect upon enactment.

21 3 EXPLANATION

21 4 This bill requires a contractor to pay workers the same
21 5 hourly wage plus fringe benefits for certain public
21 6 improvements as the contractor would pay workers for a private
21 7 construction or improvement project. The bill allows the
21 8 per-hour wage rate to be based on what is normally paid in the
21 9 area by contractors for similar projects, and to be adjusted
21 10 on a yearly basis by the department of workforce development.
21 11 The bill includes specific criteria, such as cost of the
21 12 public improvement and the population of the city or county,
21 13 for the project to qualify for the prevailing wage rate.

21 14 The wage rates that the workers must be paid shall also
21 15 include benefits such as health insurance, life insurance,
21 16 sick leave, and vacation and holiday pay. The bill applies to
21 17 any public improvement that receives money from a public body
21 18 and includes most types of public improvements from
21 19 construction to painting to hauling.

21 20 The labor commissioner determines the wage rates for
21 21 specific geographical areas and for specific crafts,
21 22 classifications, and types of workers. This information must
21 23 be posted on the department of workforce development's
21 24 internet website. In determining what the wage rate for a
21 25 worker is, the commissioner may consult collective bargaining
21 26 agreements, wage rate determinations for federal projects in
21 27 the same area, and other information the department may
21 28 receive from contractors who participate in an apprenticeship
21 29 program approved by the federal office of apprenticeship.

21 30 The bill makes an exception for publicly owned horizontal
21 31 transportation infrastructure projects. The dollar and
21 32 population thresholds and an objections and appeals process to
21 33 be established by the department of transportation apply to
21 34 these projects. Otherwise, federal Davis-Bacon Act prevailing
21 35 wage rates and procedures apply.

22 1 An interested party affected by the wage rates has 15 days
22 2 after the department of workforce development has posted the
22 3 wage rates on its internet website to object in writing,
22 4 stating the specific reason for the objection, to the labor
22 5 commissioner. The commissioner must respond and either affirm
22 6 or modify the determination within 15 days of receiving the
22 7 objection. The commissioner must publish any modification
22 8 with five days.

22 9 Within 10 days of the commissioner's decision, the
22 10 interested party may submit an objection in writing to the
22 11 department of inspections and appeals. A hearing must be set
22 12 by the department before an administrative law judge within 30
22 13 days after the objection is filed. The administrative law
22 14 judge must make a decision about the wage rate within 20 days
22 15 and it is considered a final determination. The decision may
22 16 be appealed through judicial review under Code section 17A.19.

22 17 The bill requires that contractors and subcontractors not
22 18 pay the workers less than the established wage rate but does
22 19 not prohibit them from paying the workers more than the wage
22 20 rate. The wage rate must be paid without any deductions for
22 21 food, sleeping quarters, use of tools, or safety equipment.

22 22 The bill also requires the public body to monitor the
22 23 contractors and subcontractors to ensure that the wage rate is
22 24 paid. A call for bids must state that the wage rate must be
22 25 included in the bids for the public improvement. All bids
22 26 shall list the specific wage rates for each craft,
22 27 classification, and type of worker needed for the public
22 28 improvement. All contractors and subcontractors are required
22 29 to sign a contract that states they will pay workers the wage
22 30 rate determined by the division. If the contractors and
22 31 subcontractors are found to not be paying the wage rate, the
22 32 contract states that the contractor or subcontractor's right
22 33 to work on the public improvement and get paid for work
22 34 already done may be terminated.

22 35 The bill does not apply to public improvement projects
23 1 funded by the federal government. If a public improvement
23 2 project is financed by both a state public body and the
23 3 federal government, then the higher of the applicable wage
23 4 rates shall be paid to the workers.

23 5 The bill also requires that contractors and subcontractors
23 6 keep detailed records for at least three years about the
23 7 workers, the rates paid, and the hours worked for each public
23 8 improvement. Contractors and subcontractors must also post
23 9 the wage rates for each craft, classification, and type of
23 10 worker in a public place where workers can see the posting or
23 11 at the place where they receive their wages.

23 12 The commissioner is given specific powers for
23 13 administration, investigation, enforcement, and penalization;
23 14 including the power to sue to prevent a contractor or
23 15 subcontractor from being awarded a contract for a public
23 16 improvement when the wage rate requirements have not been met
23 17 or to withhold payments if a contractor or subcontractor does
23 18 not produce records upon request and to pay the workers
23 19 directly if the contractor or subcontractor continues to
23 20 refuse to provide records.

23 21 After receiving a written complaint, the commissioner shall
23 22 investigate whether there has been a violation. If the
23 23 commissioner determines there has been a violation, the
23 24 contractor or subcontractor must be given notice of that
23 25 violation. The notice is a formal written statement from the
23 26 department of workforce development that states the specific
23 27 violation and the amount of money due as a penalty.

23 28 If a public body has divided up a public improvement to
23 29 avoid having to pay the wage rate, the commissioner shall
23 30 order compliance. A worker who is paid less than the wage
23 31 rate set by this law can sue for the difference in payment and
23 32 collect the difference along with punitive damages, if
23 33 appropriate, costs and attorney fees in court. The contractor
23 34 or subcontractor shall also have to pay the department of
23 35 workforce development 50 percent of the underpayment.

24 1 If a second or subsequent action for underpaying a worker
24 2 is brought against a contractor or subcontractor within a
24 3 three-year period and the contractor or subcontractor is
24 4 liable, the contractor or subcontractor shall pay the
24 5 department of workforce development 75 percent of the
24 6 underpayment.

24 7 The commissioner or any interested party has a right of
24 8 action on behalf of any individual who has a right of action
24 9 under the bill. The commissioner may file a lawsuit in trust
24 10 for a worker who assigns the claim and then bring legal action
24 11 to collect the claim. The contractor shall be required to pay
24 12 the expenses for collection of the claim.

24 13 A person may not ask, demand, receive, donate, give, or
24 14 agree to give back any part of a worker's wages or thing of
24 15 value to any person who asserts that failing to do so will
24 16 prevent the worker from keeping or getting work. However,
24 17 this provision does not apply to authorized labor organization
24 18 representatives.

24 19 In addition to other penalties under this law, anyone who
24 20 attempts to get a worker to give up any part of compensation
24 21 on a public improvement by threat not to hire or by threat of
24 22 firing commits a serious misdemeanor. A serious misdemeanor
24 23 is punishable by confinement for no more than one year and a
24 24 fine of at least \$315 but not more than \$1,875. Any agreement
24 25 to work for less than the determined wage rate is not a
24 26 defense to criminal prosecution.

24 27 If a contractor or subcontractor has violated this law
24 28 twice within a three-year period, the contractor or
24 29 subcontractor shall not be given any public improvement work
24 30 for three years. The department of workforce development
24 31 shall keep a list on its website of contractors and
24 32 subcontractors who have violated this law twice within a
24 33 three-year period and notify public bodies by restricted
24 34 certified mail.

24 35 A contractor or subcontractor who has been notified of the
25 1 second violation has 10 days to request a hearing before an
25 2 administrative law judge. If no hearing is requested, the
25 3 contractor is barred from receiving public improvement work
25 4 and its name and information is posted on the department's
25 5 website. A hearing must be held within 30 days of the
25 6 request.

25 7 Apprentices employed on a public improvement project must
25 8 be registered with the federal apprenticeship and training
25 9 program. Apprentices must receive the wages set out in the
25 10 standards of apprenticeship and do only the work specified in
25 11 the trade to which they are apprenticed. An apprentice not
25 12 registered with the federal program shall be paid the wage
25 13 rate the same as any other worker.

25 14 The bill may include a state mandate as defined in Code
25 15 section 25B.3. The bill makes inapplicable Code section
25 16 25B.2, subsection 3, which would relieve a political
25 17 subdivision from complying with a state mandate if funding for
25 18 the cost of the state mandate is not provided or specified.
25 19 Therefore, political subdivisions are required to comply with
25 20 any state mandate included in the bill.

25 21 The bill takes immediate effect upon enactment.

